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7 Attorneys for Defendant JUDGE ROBERT ATTACK
(erroneously named as JUDGE ROBERT ATTACK)

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 **BEVERLY THORP,**

13 Plaintiff,

14 v.

15
16 **JUDGE ROBERT ATTACK, et al.,**

17 Defendants.

Case No. C08-01449 JF

**JUDGE ATTACK'S OPPOSITION TO
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT**

18
19 On or about April 17, 2008, plaintiff filed a pleading entitled "Notice of Motion and a
20 Motion for a Default Judgment" which indicated a hearing date of June 20, 2008. There is no
21 record of this hearing on the court's docket. However, should the Court be inclined to consider
22 plaintiff's motion, Defendant JUDGE ROBERT ATTACK (erroneously named as JUDGE
23 ROBERT ATTACK) (hereinafter "Judge Attack") hereby submits the following opposition to
24 plaintiff's motion.

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I.

**SINCE PLAINTIFF FAILED TO PROPERLY SERVE
JUDGE ATTACK AND JUDGE ATTACK HAS ALREADY
APPEARED IN THIS ACTION, PLAINTIFF'S MOTION
SHOULD BE DENIED**

In her "Notice of Motion and a Motion for a Default Judgment," plaintiff alleges that she properly served Judge Attack by mailing a copy of a summons and complaint by certified mail to Judge Attack at the courthouse in Santa Cruz (Plaintiff's Motion, 3:1 to 4:15; Exhibit 1). However, this procedure does not constitute valid personal service on Judge Attack (Fed. Rules Civ. Proc., rule 4(e), 28 U.S.C.; Cal. Civ. Proc. Code, §§ 415.10 et seq.). Since plaintiff failed to properly serve a summons and complaint on Judge Attack and because Judge Attack has already appeared in this action, plaintiff's motion for default judgment should be denied.

II.

CONCLUSION

For the aforementioned reasons, Judge Attack respectfully requests this Court deny plaintiff's uncalendared motion for default judgment.

Dated: May 30, 2008.

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

PAUL T. HAMMERNESS
Supervising Deputy Attorney General

s/s Troy B. Overton
TROY B. OVERTON
Deputy Attorney General

Attorneys for Defendant JUDGE ROBERT ATTACK
(erroneously named as JUDGE ROBERT ATTACK)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **THORP, Beverly v. Judge Robert Attack**

No.: **C 08-01449JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 30, 2008, I served the attached **JUDGE ATTACK'S OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Beverly Thorp
c/o Box 2070
Sunnyvale, CA 94087

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 30, 2008, at San Francisco, California.

Rosalinda F. Asuncion

Declarant

s/s Rosalinda F. Asuncion

Signature